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9
10 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 DAYMON JOHNSON,

12 *Plaintiff,*

13 v.
14

15 STEVE WATKIN, et al.,

16 *Defendants.*

Case No.: 1:23-cv-00848-KES-CDB

UNOPPOSED MOTION FOR
ADMINISTRATIVE RELIEF [LOCAL
RULE 233]

17
18 Pursuant to Local Rule 233, Plaintiff Daymon Johnson respectfully moves this Court for an
19 order administratively staying the case and extending the time to file a second amended complaint
20 until thirty days after the issuance of the mandate in his interlocutory appeal.
21

22 Counsel met and conferred over this motion via email with Defendants' counsel, David
23 Urban for the KCCD Defendants, and Anya Binsacca, Supervising Deputy Attorney General, for
24 Defendant Christian. All Defendants agree to this relief.

25 PRELIMINARY STATEMENT

26 Although the parties dispute the substantive issues in this case, they agree that case should
27 be decided efficiently, in a manner that avoids wasting scarce judicial and litigation resources. As
28 Plaintiff has noticed an interlocutory appeal from the denial of his preliminary injunction motion, it

1 does not make much sense for the parties to litigate over an amended complaint in district court, all
2 the while litigating the sufficiency of previous allegations in the court of appeals. Nor would it be a
3 good use of this Court's limited time to process that litigation, while the Ninth Circuit's guidance,
4 one way or another, would be forthcoming soon enough.

5 To preserve judicial and litigant resources, courts often stay further proceedings pending the
6 outcome of interlocutory appeals. This case is now well-suited to this relief.

7 PROCEDURAL HISTORY

8 Plaintiff Bakersfield College professor Daymon Johnson alleges that KCCD treats
9 dissenting political speech as a firing offense, and that state regulations that require him to conform
10 to a political ideology as a condition of employment, in violation of his First Amendment rights.

11 On September 23, 2024, this Court denied Johnson's motion for a preliminary injunction,
12 and granted Defendants' motion to dismiss, affording Johnson 45 days leave to file a second
13 amended complaint. Johnson noticed an interlocutory appeal from the denial of his preliminary
14 injunction motion later that same day.

15 ARGUMENT

16 "[T]he power to stay proceedings is incidental to the power inherent in every court to control
17 the disposition of the causes on its docket with economy of time and effort for itself, for counsel,
18 and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Those interests now
19 counsel staying further proceedings. It would be inefficient for the parties and the Court to file and
20 litigate over an amended complaint before first obtaining the Ninth Circuit's guidance. An
21 administrative stay would prejudice no one. But it would streamline the litigation and minimize the
22 duplication of effort by the parties and the courts.

23 "[A] division has been identified in this Circuit regarding the appropriate standard' to apply
24 when determining whether to stay proceedings pending an interlocutory appeal of a district court
25 order." *Flores v. Bennett*, 675 F. Supp. 3d 1052, 1057 (E.D. Cal. 2023) (quoting *Finder v. Leprino*
26 *Foods Co.*, No. 1:13-cv-2059-AWI-BAM, 2017 U.S. Dist. LEXIS 8343, 2017 WL 1355104, at *2
27 (E.D. Cal. Jan. 20, 2017)). Some courts have applied the preliminary injunction factors of *Nken v.*
28 *Holder*, 556 U.S. 418 (2009) when considering stays of proceedings, but most follow *Landis*.

1 Courts that applied *Nken* “did so without any discussion of the *Landis* standards.” *Rico v. Beard*,
2 No. 2:17-cv-1402-KJM-DB, 2019 U.S. Dist. LEXIS 148656, at *14 (E.D. Cal. Aug. 29, 2019)
3 (citations omitted).

4 “Although the Ninth Circuit has not addressed this division, district courts that have directly
5 confronted the question of whether the *Nken* test or the *Landis* test applies to stays of proceedings
6 have overwhelmingly concluded that the *Landis* test or something similar governs.” *Flores*, 675 F.
7 Supp. 3d at 1057 (internal quotation marks omitted). “[T]he *Nken* test primarily applies when a
8 party seeks to stay the effect of a judgment; whereas, *Landis* applies to guide courts deciding
9 whether to stay proceedings.” *Id.* (internal quotation marks omitted); *see also Wilhoite v. Xiaodi*
10 *Hou*, No. 3:23-cv-02333-BEN-MSB, 2024 U.S. Dist. LEXIS 101207, at *11 (S.D. Cal. June 6,
11 2024).

12 Per *Landis*, district courts considering administrative stays weigh “(1) the possible damage
13 of granting the stay; (2) the hardship or inequity on the movant by not granting the stay; [and] (3)
14 the orderly course of justice.” *Id.* at 1056-57 (citing *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.
15 1962)); *see also Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005).

16 All three factors point in one direction. There is no possible damage in granting the stay, as
17 the defendants are not currently enjoined from doing anything. The hardship suffered not just by
18 movant, but by all parties and the Court in the absence of a stay is plain: a great deal of litigation
19 that could be upended or avoided by the Ninth Circuit’s forthcoming decision. And this much ties
20 closely to the third prong: the orderly course of justice.

21 When a case is stayed pending the resolution of other proceedings, “[t]he question is
22 whether there is sufficient overlap between the proceedings that waiting for one to be resolved
23 would work to simplify issues in the other or preserve judicial resources.” *United States v.*
24 *California*, No. 2:18-cv-00490-JAM-KJN, 2018 U.S. Dist. LEXIS 180132, at *13-*14 (E.D. Cal.
25 Oct. 19, 2018) (citations omitted). “The question here is one of efficiency. While the court should
26 certainly consider issues of fairness and prejudice as well, the point of a stay is avoiding potentially
27 unnecessary work by all those involved.” *Rico*, 2019 U.S. Dist. LEXIS 148656, at *16-*17.

28 “Although the public always has an interest in the timely resolution of litigation, it also has an

1 interest in efficient and economical litigation. This is particularly apparent when a governmental
2 entity is involved because public resources are often at stake.” *Burgan v. Nixon*, No. CV 16-61-
3 BLG-CSO, 2016 U.S. Dist. LEXIS 154323, at *15 (D. Mont. Nov. 7, 2016).

4 The governmental entities here have consented to the stay, and the efficiency-enhancing
5 benefits of a stay under these circumstances is plain.

6 CONCLUSION

7 Plaintiff respectfully requests that the case be administratively stayed pending the outcome
8 of his interlocutory appeal, and that the deadline to file a second amended complaint be extended to
9 thirty days from the receipt of the Ninth Circuit’s mandate in his pending interlocutory appeal.¹

10 Dated: October 4, 2024

Respectfully submitted,

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28 ¹ The parties may soon be providing notice regarding the succession and automatic substitution of
official capacity defendants, per Fed. R. Civ. P. 25(d), but that would not impact the requested stay
or course of proceedings.